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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 07 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Pentecostal church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a minister of music. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister of music immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the position of minister of music amounts to a qualifying religious occupation.

On appeal, counsel asserts that a brief will be forthcoming within 30 days. To date, more than seven months later, the record contains no further submission. We consider the record to be complete as it now stands.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition

> based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

The director's notice of intent to revoke focused primarily on the issue of the beneficiary's experience during the qualifying period. Therefore, we shall consider this issue first. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on January 14, 1998. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister of music throughout the two years immediately prior to that date.

James R. Pennington, then pastor of the petitioning church, states:

> [The petitioning church] has made an offer of employment to [the beneficiary] to serve as the Minister of Music for the Church. [The beneficiary] has been a member in good standing of the congregation since August 1995 and has served in the role of Minister of Music for the last two years. The Music Minister's position is a salaried position for $300.00 per week. . . .

The petitioner has submitted a copy of a "Certificate of Ordination," issued to the beneficiary on November 5, 1989 at Namirembe Cathedral, Kampala, Uganda. Copies of programs from the petitioner's church services in 1996 and 1997 identify the beneficiary as the church's "organist."

Following the approval of the petition, the beneficiary applied for adjustment of status and, as part of that adjudication, submitted various documents, including a Form G-325A Biographic Information sheet, and he participated in an interview. Among the documents are Forms I-20-ID, dated December 16, 1996, indicating that the beneficiary "has been accepted for a full course of study at [Los Angeles Valley College], majoring Computer Science," expected to last from January 1997 until 1999. Earlier, the beneficiary had studied English as a second language at The Language Institute. On the Form G-325A, instructed to list his employment during the "last five years" (i.e., 1993-1998), the beneficiary listed only one "occupation," that of a "student."

In a letter dated February 21, 200[redacted] evidently James Pennington's successor as pastor of the petitioning church, stated that the beneficiary "has served as a volunteer in the role of Minister of Music since 1995 and has been working for us on a part time basis since 1999. We now wish to confirm our offer of full time employment." During his adjustment interview, the beneficiary affirmed that his church work was part

time, and that he had been studying at Los Angeles Valley College from 1997 to 1999. The beneficiary asserts that illness prevented him from carrying a full course load, and that, upon his release from the hospital, he "was not allowed to go to public places for about 4 months." A physician's letter confirms that the beneficiary was ill in 1998, but does not discuss the details claimed by the beneficiary. The letters from the petitioner and St. Mark's do not mention any four-month interruption in the beneficiary's work in 1998, although a church would presumably qualify as a "public place" in the context of attempting to contain a contagious illness.

In addition to the letter from the petitioning church, the petitioner had submitted a letter, dated April 29, 2001, from [redacted] of St. Mark's Episcopal Parish. Rev. Hull states:

> [The beneficiary] is employed by St. Mark's Episcopal Church . . . as our organist and choir director. He is expected to play the organ and conduct the choir on Sunday morning and lead choir rehearsals every other Thursday from 7-9 pm. He also plays at special services throughout the year including funerals, weddings, and special liturgies. [The beneficiary] is compensated over $8,000 a year for his services plus earnings from special church events.

The beneficiary submitted Form W-2 Wage and Tax Statements and tax returns, indicating that the petitioner paid him $16,900 in 1999 and $17,600 in 2000. St. Mark's Episcopal Church paid the beneficiary $6,940 in 2000. On his state and local tax returns for 2000, the beneficiary did not report the income from St. Mark's.

The director issued a notice of intent to revoke, stating that the qualifying experience must be full-time, compensated employment, rather than part-time volunteer work. The director added that the beneficiary, on the Form G-325A, identified himself as a "student." The director also observed that St. Mark's Episcopal Church is not in the same religious denomination as the qualifying church.

In response to this notice, counsel asserts:

> The Episcopal Church and the Pentecostal Church are both Christian Churches of the Protestant denomination. The two churches are within the same religious denomination within the meaning of the regulation. The beneficiary explained at his interview that the psalms and religious content used for the two part time positions at the Episcopal Church and the Pentecostal Church were similar and compatible.

The regulation at 8 C.F.R. § 204.5(m)(2) defines a "religious denomination" as a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination.

We reject counsel's claim that there exists one single "Protestant denomination." The burden is on the petitioner to submit evidence to show that St. Mark's and the petitioner share the same denomination. Even within the Pentecostal movement, there are distinct denominations, which differ over such issues as the nature of the Trinity. There are also separate Baptist denominations, Presbyterian denominations, and so on. "Protestant," which encompasses everything from the United Church of Christ to the Assemblies of God, is not a coherent, self-contained religious denomination.

Pursuant to 8 C.F.R. § 204.5(m)(1) and section 101(a)(27)(C)(i), the beneficiary must, throughout the entire qualifying period, have been a member of the prospective employer's religious denomination throughout the two-year period preceding the petition's filing date. In this instance, the qualifying period was 1996-1998. There is no evidence that the beneficiary was involved with St. Mark's Episcopal Church prior to 2000. Therefore, the beneficiary's part-time employment there is not disqualifying on the basis of the two-year membership requirement. Indeed, there is no evidence that the beneficiary has ever formally become a member of the Episcopal denomination. Thus, the beneficiary's work for St. Mark's is not *inherently* disqualifying, but it does serve to demonstrate that churches of two different denominations will simultaneously employ the same individual in a musical capacity. This supports the director's finding (discussed below) that the duties of a minister of music is not traditionally viewed as a function *within the denomination*, as opposed to a relatively secular function in which musical ability is, evidently, of greater importance than membership in the denomination.

Regarding the voluntary nature of the beneficiary's work, counsel states "[t]here is nothing in the regulations or statute which requires salaried employment in the conventional sense." The statute and regulations require two years of continuous experience in a religious "occupation," a term indicative of employment. The Board of Immigration Appeals has interpreted the term "continuously" to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948). Unpaid volunteer work would not represent a viable means of sustained support. Furthermore, the Board of Immigration Appeals also determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). Thus, part-time work is not continuous experience.

The director denied the petition, in part because the available evidence indicates that the beneficiary was first and foremost a student during the qualifying period, performing only incidental and unpaid duties for the petitioning church. The director added that, because the beneficiary studied computer science as recently as 1999, it is far from clear that the beneficiary intends to enter the United States to work for the church, in a field that has little to do with computer science.

On appeal, counsel claims that "the Beneficiary has demonstrated full-time prior experience" as a minister of music. Counsel does not elaborate, or corroborate this claim. Every prior submission consistently indicates that the beneficiary's past experience was part time. Perhaps counsel means that the beneficiary's two part-time jobs (for the petitioner and St. Mark's) add up to the equivalent of full-time employment, but the record offers no support for this contention, and there is no indication that the beneficiary worked at St. Mark's during the 1996-1998 qualifying period.

Counsel states "[t]he Beneficiary was supported by the Petitioner, which provided food and accommodation and assisted with his needs, in addition to material support from church members and therefore, did not require supplemental employment income." Religious work can count as "employment" even if the compensation is in a non-monetary form such as room and board. *See Matter of Hall*, 18 I&N Dec. 203 (BIA 1982). Here, however, there is no evidence to support counsel's claim that the petitioner provided the beneficiary with room and board throughout the qualifying period. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). No official of the petitioning church has stated that the church supported the beneficiary between January 1996 and January 1998, and the petitioner has not shown that the addresses where the beneficiary resided during that time are owned or leased by the petitioning church. Until counsel made this claim on appeal, the record contained no indication whatsoever that the petitioning church provided any support to the beneficiary. Even if the church did provide some

support, the record consistently indicates that the beneficiary worked part-time, which, pursuant to *Matter of Varughese*, is non-qualifying.

The evidence of record supports the finding that the beneficiary was primarily a student (studying a secular subject) during the qualifying period, while essentially volunteering at the church in his spare time. We affirm the director's finding that the petitioner has not adequately established that the beneficiary possesses the necessary continuous experience.

The next issue concerns the nature of the position offered to the beneficiary. While the petitioner has, at times, represented the petitioner as an ordained minister, a minister of music whose ordination does not derive from theological training is not a "minister" for immigration purposes. *See Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). Both the petitioner and the director have focused on the question of whether the beneficiary's work amounts a religious occupation.

The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, compensated occupation within the denomination.

James Pennington's letter contains the following description of the beneficiary's work:

> [The beneficiary's] responsibilities within the Ministry of Music include: Conducting the liturgical and musical instructional orders during regular weekly church service on Sundays, as well as weddings, and other service[s], lead the prayer groups of the church in the musical portions of their gatherings, and lead the youth groups in the musical portions of their gatherings. In addition he will be teaching music to the Church Choir, including holding rehearsals and practice for various church choirs. He will also be responsible to choose the proper music according to the Church Calendar.

In the notice of intent to revoke, the director stated "occupations in fields related to music such as organists, pianists, choir directors, music directors, etc. do not qualify as religious occupations because the jobs are

essentially secular, rather than traditional religious functions." In response, counsel states "[i]n the Ugandan and African Church tradition and practice there is a very heavy emphasis on music and signing as part of the religious ritual." We do not dispute that many religious services involve music. We do not, however, conclude that every musician involved in a religious service is, therefore, engaged in a religious occupation. By way of analogy, the role of the altar boy is deeply ingrained in Roman Catholic tradition, and, like the beneficiary during the qualifying period, altar boys are unpaid volunteers. We do not, however, confer immigration benefits on Roman Catholic aliens by virtue of their experience as altar boys.

Counsel compares choir leaders and music directors to Jewish cantors, who are specifically included in the list of qualifying religious occupations. The petitioner has not shown that the beneficiary has played the same central, focal role in its observances that cantors do for their synagogues. As noted above, the church programs submitted with the petition make little mention of the beneficiary except to identify him as the "organist," providing accompaniment to services rather than actually leading them the way that a cantor would.

The burden is on the petitioner to establish not only that it typically uses music in its services, but that churches within the denomination traditionally employ full-time, paid workers in the position sought. As noted above, the fact that churches in two different denominations have employed the beneficiary at the same time does not readily suggest that the beneficiary's duties are tied to the petitioner's denomination, rather than to his musical skills.

The director, in revoking the approval of the petition, found that "the evidence of record indicates that [the beneficiary's] position as a choir instructor and organ player . . . would typically be performed by volunteers from the congregation." On appeal, counsel asserts "[t]he Petitioner requires a Minister of Music who has been trained and is qualified to provide spiritual guidance to adult and youth members of the congregation. Counseling and religious instruction are integral components of the duties." The record, prior to the appeal, contained no claim that the beneficiary provided counseling or religious instruction. To support this new claim, counsel cites a "letter from Petitioner enclosed" with the appeal.

The new letter is not, as counsel states, "from [the] petitioner." Rather, the letter is from [redacted] Mark's Episcopal Church, who describes the beneficiary's work during the preceding five years (i.e., 1999-2004). St. Mark's is not the petitioner, and the beneficiary was not a member of the Episcopalian denomination during the 1996-1998 qualifying period, notwithstanding Rev. Hull's assertion that "the Pentecostal and Episcopal Churches are deeply connected to one another and except for some small style differences the two have much in common."

Counsel's apparent, erroneous reference to St. Mark's as "the petitioner," along with the complete lack of any new submission from the true petitioner, raises the question of whether the petitioner is even aware that this appeal has been filed. If the beneficiary has ceased to work for the original petitioner, his new employer has the right to file a new petition on his behalf, which will be subject to the same requirements as the initial petition.

Counsel, on appeal, has failed to overcome the grounds for denial cited in the director's notice of revocation. Beyond those grounds, we note some additional deficiencies which should have prevented the initial approval of the petition.

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

> (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or
>
> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

In this instance, the record contains nothing to establish that the petitioning church possesses the required exemption, or the documentation that would be necessary to secure such an exemption. Furthermore, the regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The record contains no financial documentation to establish the petitioner's ability to pay the beneficiary's proffered wage of $300 per week.

We acknowledge that the director's notices did not mention these deficiencies. Still, it remains that, without evidence of the petitioner's tax exempt status and ability to pay, the petition should never have been approved in the first place, and thus they demonstrate further evidence that the initial approval was in error, and that the director therefore acted properly in revoking that approval.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.